IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16053 of 2005
To
SPECIAL CIVIL APPLICATION No. 16087 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER - Petitioner(s)

Versus

KISHORE NAVINCHANDRA & Others.- Respondent(s)

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Appearance :
GOVERNMENT PLEADER for Petitioner No(s).: 1.
MR MUKESH H RATHOD for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 08/08/2005

ORAL COMMON JUDGMENT

As common question of law and facts arise in this group of petitions, the present group of petitions is being disposed of by this common judgment and order.

2. Rule in each petition. Service of notice of Rule is waived by Shri Mukesh H. Rathod, learned advocate appearing on behalf of respondent workman in each of the matter. With the consent of the learned advocates appearing on behalf of the parties, these matters are being disposed of today finally.

3. In all these petitions under Articles 226/227 of the Constitution of India, the common petitioner, Deputy Executive Engineer, Irrigation Sub-Division, Gondal, Rajkot has challenged the legality and validity of the judgment and awards passed by the Labour Court, Rajkot dated 3.8.2004 in Reference (LCR) No. 411 of 1995 to Reference (LCR) No. 450 of 1995.

4. It appears from the record, that all the concerned respondent workmen raised industrial disputes challenging their alleged termination/retrenchment which were referred to the Labour Court, Rajkot for its adjudication, and by judgment and award dated 18.12.1996 the Labour Court, Rajkot allowed all the References. It also appears from the record that the judgment and awards passed by the Labour Court dated 18.12.1996 came to be challenged by the petitioners before this Court by way of Special Civil Applications No. 3522 of 1998 to 3561 of 1998 with Special Civil Application No. 3500 of 1998, which came to be allowed by the learned Single Judge of this Court [Coram: Mr. N.N. Mathur,

J., as he then was], vide order dated 6.11.1998, quashed and set aside the judgment and award dated 18.12.1996, and had remanded all the References to the Labour Court, Rajkot with a direction to deal with the individual cases and give a finding whether the workmen had completed 240 days or not. It appears from the record that being aggrieved and dissatisfied with the said order dated 6.11.1998 passed in the aforesaid Special Civil Applications, the concerned workmen preferred Letters Patent Appeals No. 1504 of 1998 to 1543 of 1998 and the Division Bench of this Court partly allowed the aforesaid Letters Patent Appeals confirming the order of remand passed by the learned Single Judge, however with direction to the authorities to reinstate the concerned workmen and that the proceedings before the Labour Court will go on and the aforesaid reinstatement will be subject to the final outcome of the proceedings before the Labour Court. It appears from the record that thereafter on remand the aforesaid References came to be dealt with by the Labour Court, Rajkot and the Labour Court, Rajkot considering the individual cases by its judgment and award dated 3.8.2004 partly allowed the aforesaid References insofar as reinstatement is concerned and quashed and set aside the action of the petitioners in terminating their services as illegal, however it did not pass any order with regard to backwages but granted continuity of service. Being aggrieved and dissatisfied with the separate judgment and awards passed by the Labour Court, Rajkot dated 3.8.2004 in

Reference (LCR) No. 411 of 1995 to 450 of 1995, the petitioner has preferred the present Special Civil Applications under Article 226/227 of the Constitution of India.

5. Shri A.D. Oza, learned Government Pleader has made number of submissions on merits with regard to the nature of work being performed by concerned workman and that they have not completed 240 days in the last preceding year, and/or even with regard to juniors being continued and/or alleged breach of Sections 25(F), (G) and (H). He has relied upon the documentary evidence at Exhs. 20, 134 and 260 in support of his submission that none of the workmen has completed more than 240 days and that the finding given by the Labour Court is contrary to the evidence on record. He has submitted that the Labour Court has given the finding with regard to completion of 240 days mainly on the ground that the petitioner has not produced the relevant documents to prove the contents of the documents at Exhs. 20, 134 and 260 and shifting the onus upon the petitioner. He has relied upon the decisions of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, reported in (2004) 8 SCC Page 161; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas, reported in (2004) 8 SCC Page 195; and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, reported in AIR 2005 Supreme Court Weekly 3160, in support of his

submission that the onus is upon the respondent workmen to first prove by leading evidence that they have completed 240 days in the last preceding year, and non-production of muster-rolls, *ipso facto,* will not lead to any adverse inference and to hold that the concerned workman has completed more than 240 days in the last preceding year. However he has submitted that in fact the petitioner is also having documentary evidence to prove the contents of Exhs. 20, 134 and 260 and if opportunity is given to the petitioner to prove the same they can adduce the evidence to show that the concerned workman has not completed 240 days. It is therefore requested to remand the References to the Labour Court for its fresh decision.

6. On the other hand, Shri Mukesh H. Rathod, learned advocate appearing on behalf of the workmen has tried to support the judgment and awards passed by the Labour Court, Rajkot in each Reference. He has submitted that even considering the three documentary evidences at Exhs. 20, 134 and 260 the number of working days of the concerned workmen even as per the petitioner are not tallying and/or different and therefore no reliance can be placed upon those documents as rightly held by the Labour Court that the concerned workman has completed 240 days. He has also further submitted that if this Court is of the opinion that the matters deserve

remanding then in that case the services of the concerned workmen be ordered to be protected until there is final decision on remand and that they may also be given an opportunity to lead and adduce evidence and the Labour Court may be directed to decide and dispose of the same within the time as may be specified by this Court.

7. Heard the learned advocates appearing on behalf of the parties. It is the contention on behalf of the petitioner that none of the concerned workmen has completed 240 days in the last preceding year and for that purpose they have produced a Statement of Working Days of each concerned workman by way of documentary evidence at Exhs. 20, 134 and 260. However, the Labour Court having held that the petitioner has not produced the documentary evidence in support of the Statement of Working Days mentioned at Exhs. 20, 134 and 260, disbelieved the same and further held that the concerned workman has completed 240 days. It is the contention on behalf of the petitioner that they were having documentary evidence in support of Statement of Working Days for being produced before the Labour Court, however the same was not produced as according to them the Statement of Claim is prepared on the basis of documentary evidences.

8. In the facts and circumstances and considering the reasoning given by the Labour Court in the judgment and awards, this Court is of the

opinion that if the matters are remanded to the Labour Court, Rajkot, allowing the petitioner to prove documentary evidences at Exh. 20 and/or Exh.134 and/or Exh. 260 by producing further materials to show that none of the workmen has completed 240 days in the last preceding year, it will meet the ends of justice. However, Shri Rathod is right in his submission that while quashing and setting aside the judgment and awards passed by the Labour Court and remanding the References to the Labour Court, the position which is prevailing may be continued, meaning thereby all the concerned workmen may be continued in service. In view of the fact that the concerned workmen came to be reinstated during the pendency of the aforesaid References pursuant to the judgment and order passed by the Division Bench of this Court in the aforesaid Letters Patent Appeals No. 1505 of 1998 to 1543 of 1998, the services of the concerned workmen are to be protected during the pendency of the References, on remand. On remand, it will be open for the concerned workmen to also prove breach of Section 25(G) and (H) of the I.D. Act also by leading evidence.

9. For the reasons stated above, all the petitions succeed. The judgment and awards passed by the Labour Court, Rajkot in Reference (LCR) No. 411 of 1995 to 450 of 1995 is hereby quashed and set aside. All the References are remanded to the Labour Court, Rajkot, for fresh decision in accordance with

law and on merits and after considering the observations made hereinabove and after allowing the concerned parties to lead fresh evidence documentary as well as oral. It is directed that during the pendency of the References, all the concerned workmen be continued in service, in light of the observations made in the judgment and order passed by the Division Bench of this Court dated 11.5.1999 in Letters Patent Appeals No. 1505 of 1998 to 1543 of 1998 and their services are protected till final disposal of the References and subject to ultimate outcome of the judgment and award that may be passed by the Labour Court, Rajkot, on remand. The Labour Court, Rajkot is directed to decide and dispose of the same as early as possible preferably within the period of 12 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent in each of the matter. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.

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